

# fiscal forum

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## ***DURANT:*** **WHAT HAPPENED AND IMPLICATIONS FOR THE FUTURE**

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In 1980, Donald Durant brought an action against the state alleging a violation of Article 9, Section 29 of the State Constitution, a section of the Headlee Amendment. Mr. Durant brought this suit on behalf of seven taxpayer residents of the Fitzgerald School District along with the school board of Fitzgerald Schools. With the introduction of this suit, the case commonly known as *Durant vs. State of Michigan* began. The Michigan Supreme Court issued an opinion in 1997 affecting a total of 83 plaintiff school districts and one plaintiff intermediate school district (ISD), 17 years after the initial filing.

In brief, this **Fiscal Forum** will explain the fundamentals of the Headlee Amendment, the *Durant* lawsuit, the Supreme Court's 1997 decision, immediate impacts, future impacts on *all* schools and ISDs, and implications for the state.

It should be noted that **this is not a legal document intended for use in a court of law**. This document shall not be construed to constitute an admission of liability to the districts and ISDs in this state in any litigation or future litigation with a district or ISD. This document is intended as a summary of important and relevant events and as a reference tool encapsulating the *Durant* lawsuit and outcomes impacting schools and the state.

### **The Headlee Amendment**

In 1978, the voters of Michigan amended the State Constitution by adopting the Headlee Amendment.<sup>1</sup> This amendment

limits certain taxes, mandates voter approval for additional taxes, and establishes limits on revenue collected. The amendment also prohibits the state from reducing the state funding proportion of any activities or services required by state law in existence at the time of

<sup>1</sup> For actual text, see MCL Const. 9.6, 9.25-9.34.

enactment of the amendment. The term “base year” is used to refer to that funding proportion in place at the time of enactment of the amendment.

Further, any necessary increased costs associated with new mandated activities or services, or increased levels of services beyond those required by law in the base-year, must be totally paid by the state. If the state fails to make appropriations to pay for any necessary increased costs, the local unit(s) of government will have a claim against the state.

In essence, this portion of the Headlee Amendment (Article 9, Section 29) states that any levels of activities or services required by state law, above the levels of activities required in the base year, must be funded by the state. Also, the state must never fund less than the proportion of state funding in 1978 for the services required at that time, unless the mandate is repealed.

### **Durant vs. State of Michigan**

When the *Durant* lawsuit was filed in 1980, it alleged that the state had violated the Headlee Amendment by failing to pay its percentage of the necessary costs of those activities which the State of Michigan mandated the plaintiff school districts to perform. In the initial brief, the state was accused of failing to provide sufficient funding for elementary and secondary education as a whole. The plaintiffs were subsequently asked to focus on specific programs or services, rather than education as a whole.

A Special Master (fact finder) appointed by the Supreme Court determined that school lunch and supplemental milk programs, special education transportation, special

education, and driver’s education were state-mandated activities as embodied in and subject to Article 9, Section 29.<sup>2</sup> With a focus on these specific programs, the Supreme Court issued an opinion in July 1997, ending the 17-year legal proceedings.

### **The Opinion**

The Supreme Court held that special education, special education transportation, and the school lunch program are required by state law. Driver’s education and bilingual education are no longer mandated.<sup>3</sup> The Court also held that the state had indeed violated the Headlee Amendment as it pertains to maintaining proportional funding levels required by law for these programs.

Specifically, this means that the Court found the state had been funding these programs at levels proportionally below those appropriated in 1978, when the Headlee Amendment was adopted and enacted. Through a different Special Master appointed by the Court of Appeals in 1995, state funding percentages from 1978 were determined for these services. The Supreme Court then issued a monetary “remedy” that was calculated on the amount of “underfunding” in 1991-92, 1992-93, and 1993-94.<sup>4</sup>

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<sup>2</sup> The Syllabus prepared by the Reporter of Decisions and attached to the Opinion describes in detail the order of events leading up to the appointment of Special Master Macomb Circuit Judge George R. Deneweth.

<sup>3</sup> Bilingual education and driver’s education were mandated services until July 1, 1996 and April 1, 1997 respectively. These mandated services were repealed.

<sup>4</sup> For the Supreme Court’s rationale in calculating damages for these years alone, please refer to the footnote on page 28 of the Opinion issued July 31, 1997.

In the decision, the Court, along with four of the seven Supreme Court Justices, awarded nearly \$212 million in monetary judgments, including attorney fees, to the 83 school districts and one ISD who were plaintiffs in the case. This award reflected the "full amount of underfunding to each district during 1991-92, 1992-93, and 1993-94 . . . and should be distributed to plaintiff school districts and apportioned to taxpayers within each district, if appropriate."<sup>5</sup>

### Immediate Impacts

For the 84 plaintiffs, \$212 million was awarded as a result of the Supreme Court's decision in the *Durant* case. The Court did not direct the state as to the method of repayment, nor to the time schedule for complying with the Court's decision. On April 15, 1998, the state paid the entire \$212 million award to the plaintiff districts and the ISD. The lone stipulation for receipt of these funds was that each plaintiff's board of education hold a public hearing to discuss how the board planned to use the funds.

The ruling also impacted all districts and ISDs, by determining that certain state funding percentages must meet or exceed the funding levels experienced in 1978 unless changes in the mandates occur. Two of the most important funding percentages are those for special education and special education transportation.

The Special Master determined that the state must pay at least 28.6138% of the total approved costs of special education, and 70.4165% of the total approved costs of special education transportation. Again,

these funding percentages must be met or exceeded, unless and until a change in the mandates allows for a lesser level of special education or special education transportation to be provided.

### Non-Plaintiffs and Future Impacts

After negotiations with the Executive Branch, the Legislature further provided awards (totaling more than \$636 million) to all of the non-plaintiff districts and ISDs, if they submitted waivers by March 2, 1998 relinquishing any possible claims similar to the claims asserted by the plaintiffs in *Durant*. The monetary offers were calculated in identical fashion as those determined for the plaintiffs by the Special Master. All non-plaintiff districts and ISDs submitted waiver resolutions. Similar to the plaintiffs, the boards of non-plaintiff districts must also hold hearings as to the proposed uses of their settlement awards.

Non-plaintiffs receive the award under two equal payment types:

- 1) Yearly cash payments over 10 years equaling 1/20th of the total award, and
- 2) A bonding option or annual cash payments over 15 years equaling 1/30th of the total award.

For example, if a hypothetical non-plaintiff district's settlement offer was \$900,000, the district's first-half payment would be \$450,000 paid in yearly cash installments of \$45,000 over ten years. Uses of these funds are restricted to textbooks, electronic instructional material, software, technology, infrastructure, buses, security, technology training, or payments on debt service.

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<sup>5</sup> Opinion, July 31, 1997, page 36.

The second half of the payment offers a bonding option. Districts choosing the bonding option must use the proceeds of these bonds only for purposes consistent with those requirements stated in Section 1351a of the Revised School Code. Eligible purposes include purchasing, erecting, or completing buildings; purchasing buses; equipping buildings for technology; and refunding existing bonded indebtedness.

For our hypothetical district, the remaining \$450,000 of the settlement offer is available to the district in a lump-sum payment if it chooses to “borrow” from the Michigan Municipal Bond Authority. The state then would make annual payments over 15 years to the bonding district in order for the district to pay off the bonds “borrowed” from the bond authority.

If a non-plaintiff chooses not to use the bonding option, then the remaining half of its settlement offer will be paid in 15 equal yearly payments. With these funds, a district may, in the following order:

- 1) Pay debt service on existing voter-approved bonds,
- 2) Pay debt service on other limited tax obligations, or
- 3) Deposit the funds into a sinking fund.

Using our hypothetical non-plaintiff district example again, the remaining \$450,000 of the settlement offer under the cash approach would be paid to the district in 15 yearly installments of \$30,000 each. Payments would end in FY 2012-2013.

## State Implications

As stated earlier, the plaintiff districts

received their monetary awards of nearly \$212 million on April 15, 1998. The state transferred this amount from the Budget Stabilization Fund (BSF) to the School Aid Fund (SAF), and the actual payment was made from the SAF.

Additionally, language in the School Aid Act, 1997 PA 142, states that for the next ten years, \$32 million shall be transferred from the BSF into the SAF to meet the obligation of the 10 yearly cash payments for the non-plaintiff districts and ISDs. This appropriation totals half of the offers of settlement to the non-plaintiffs.

To pay for the remaining half of the offers of settlement, the School Aid Act also includes a section appropriating \$40 million from the SAF (which was transferred from the BSF in FY 1998-99), and then \$40 million from the General Fund for the following 14 years. This appropriation is estimated to sufficiently pay for the principal plus interest costs accruing on bonds “borrowed” from the Michigan Municipal Bond Authority.

## Conclusion

*Durant vs. State of Michigan* will continue to have an effect on the state’s financing of schools in the future. The impacts on school finance arising directly from this case are two-fold:

- 1) Settlement offers to be paid over ten and 15 years, and
- 2) Funding percentage requirements to be maintained.

The first impact is irreversible. The second impact could be mitigated if current mandates for special education and special education transportation are modified.